

AMENDED IN ASSEMBLY APRIL 21, 2005

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 797

Introduced by Assembly Member Wolk

February 18, 2005

An act to add Sections 51256.3 and 56375.6 to the Government Code, and to amend Sections 29702, 29703, 29705, 29706, 29707, 29735, 29739, 29741, 29753, 29756, 29756.5, 29763, 29763.5, 29765, 29770, 29771, and 29776 of, and to add Sections 29760.5, 29766.5 to, the Public Resources Code, relating to natural resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 797, as amended, Wolk. Sacramento-San Joaquin Delta.

(1) Under the existing Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, the local agency formation commission in each county is required to review and approve or disapprove proposals for changes of organization or reorganization of cities and districts within the county.

This bill would prohibit a local agency formation commission from approving or conditionally approving a change of organization, a reorganization, or a change to a sphere of influence of a local government agency of territory that is part of the primary zone of the Sacramento-San Joaquin Delta, if that approval would allow the agency to provide facilities or services related to sewers, nonagricultural water, or streets or roads to the affected territory, unless these facilities or services are allowed under the applicable resource management plan.

(2) Existing law creates the Delta Protection Commission consisting of 19 members and specifies that the membership includes various individuals.

This bill would recast the membership of the commission to consist of ~~an unspecified number of 21 members~~. *The bill would remove as members the Director of Parks and Recreation, the Director of Fish and Game, the Director of Food and Agriculture, the executive officer of the State Lands Commission, the Director of Boating and Waterways, and the Director of Water Resources, and would add as members the public member of the California Bay-Delta Authority who represents the delta region, the Secretary of Food and Agriculture, and 6 members appointed by the Secretary of the Resources Agency representing the public and departments of the Resources Agency, as specified.*

The bill would require the commission, on or before, January 1, 2007, to prepare and submit to the Governor and the Legislature a report reviewing the effectiveness of the resource management plan that identifies land use changes and growth pressures within the primary zone and land use changes and growth pressures in the secondary zone that may affect the resources of the primary zone of the delta.

The bill would revise provisions with respect to commission chairpersons, meetings, advisory committees, programs, and related provisions regarding conservation easements, various reports and plans, and local government or agency actions and appeals from these actions.

The bill would also revise certain of the findings and declarations of the Legislature relating to the Sacramento-San Joaquin Delta.

(3) Existing law limits appropriations for the support of the commission from the Sacramento-San Joaquin Delta Protection Fund to \$250,000.

This bill would delete that limit.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 51256.3 is added to the Government
2 Code, to read:

1 51256.3. Notwithstanding Section 51256, for the purposes of
2 facilitating long-term agricultural land conservation in the
3 Sacramento-San Joaquin Delta, an easement located within the
4 primary or secondary zone of the delta, as defined in Sections
5 29728 and 29731 of the Public Resources Code, may be related
6 to contract rescissions in any other portion of the primary or
7 secondary zone without respect to county boundaries.

8 SEC. 2. Section 56375.6 is added to the Government Code, to
9 read:

10 56375.6. (a) A commission shall not approve or
11 conditionally approve a change of organization, a reorganization,
12 or a change to a sphere of influence of a local government
13 agency of territory that is part of the primary zone of the
14 Sacramento-San Joaquin Delta, as defined in Section 29728 of
15 the Public Resources Code, if that approval would allow the
16 agency to provide facilities or services related to sewers,
17 nonagricultural water, or streets or roads to the affected territory,
18 unless these facilities or services benefit land uses that are
19 allowed under the resource management plan approved by the
20 Delta Protection Commission under Section 29760 of the Public
21 Resources Code.

22 (b) This section shall not be construed to preclude a change of
23 organization, a reorganization, or a change to a sphere of
24 influence of a local government agency for the purpose of using
25 other facilities or services provided by the local government
26 agency that benefit land uses allowed under a resource
27 management plan approved by the Delta Protection Commission.

28 SEC. 3. Section 29702 of the Public Resources Code is
29 amended to read:

30 29702. The Legislature further finds and declares that the
31 basic goals of the state for the delta are the following:

32 (a) Protect, maintain, and, where possible, enhance and restore
33 the overall quality of the delta environment and its historical
34 importance, including, but not limited to, agriculture, wildlife
35 habitat, and recreational activities.

36 (b) Assure orderly, balanced conservation and development of
37 delta land resources.

38 (c) Improve flood protection by structural and nonstructural
39 means to ensure an increased level of public health and safety.

1 SEC. 4. Section 29703 of the Public Resources Code is
2 amended to read:

3 29703. The Legislature further finds and declares as follows:

4 (a) The delta is an agricultural region of great value to the state
5 and nation and the retention and continued cultivation and
6 production of fertile peatlands and prime soils are of significant
7 value.

8 (b) The agricultural land of the delta, while adding greatly to
9 the economy of the state, also provides a significant value as
10 open space and habitat for water fowl using the Pacific Flyway,
11 as well as other wildlife, and the continued dedication and
12 retention of that delta land in agricultural production contributes
13 to the preservation and enhancement of open space and habitat
14 values.

15 (c) Agricultural lands located within the primary zone should
16 be protected from the intrusion of nonagricultural uses in the
17 secondary zone.

18 SEC. 5. Section 29705 of the Public Resources Code is
19 amended to read:

20 29705. The Legislature further finds and declares all of the
21 following:

22 (a) The delta's wildlife and wildlife habitats, including
23 waterways, vegetated unveeved channel islands, wetlands, and
24 riparian forests and vegetation corridors, are highly valuable,
25 providing critical wintering and breeding habitat for waterfowl
26 and other migratory birds using the Pacific Flyway, as well as
27 certain plant species, various rare and endangered wildlife
28 species of birds, mammals, and fish, and numerous amphibians,
29 reptiles, and invertebrates.

30 (b) These wildlife species and their habitat are valuable,
31 unique, and irreplaceable resources of critical statewide
32 significance, and it is the policy of the state to preserve and
33 protect these resources and their diversity for the enjoyment of
34 current and future generations.

35 (c) Wildlife habitat located within the primary zone should be
36 protected from the intrusion of nonagricultural uses in the
37 secondary zone.

38 SEC. 6. Section 29706 of the Public Resources Code is
39 amended to read:

1 29706. The Legislature further finds and declares that the
2 resource values of the delta have deteriorated, and that further
3 deterioration threatens the maintenance and sustainability of the
4 delta's agriculture, ecology, fish and wildlife populations,
5 recreational opportunities, historical importance, and economic
6 productivity.

7 SEC. 7. Section 29707 of the Public Resources Code is
8 amended to read:

9 29707. The Legislature further finds and declares that there is
10 no process by which state and national interests and values can
11 be protected and enhanced for the delta, and that, to protect the
12 regional, state, and national interests for the long-term
13 agricultural productivity, economic vitality, historic value, and
14 ecological health of the delta resources, it is necessary to provide
15 and implement delta land use planning and management by local
16 governments.

17 ~~SEC. 8. Section 29735 of the Public Resources Code is~~
18 ~~amended to read:~~

19 ~~29735. There is hereby created the Delta Protection~~
20 ~~Commission consisting of ___ members as follows:~~

21 ~~(a) _____.~~

22 ~~SEC. 8. Section 29735 of the Public Resources Code is~~
23 ~~amended to read:~~

24 29735. There is hereby created the Delta Protection
25 Commission consisting of ~~19~~ 21 members as follows:

26 (a) One member of the board of supervisors of each of the five
27 counties within the delta whose supervisorial district is within the
28 primary zone shall be appointed by the board of supervisors of
29 the county.

30 (b) Three elected city council members shall be selected and
31 appointed by city selection committees, from regional and area
32 councils of government, one in each of the following areas:

33 (1) One from the north delta, consisting of the Counties of
34 Yolo and Sacramento.

35 (2) One from the south delta, consisting of the County of San
36 Joaquin.

37 (3) One from the west delta, consisting of the Counties of
38 Contra Costa and Solano.

39 (c) (1) One member each from the board of directors of five
40 different reclamation districts which are located within the

1 primary zone who are residents of the delta, and who are elected
2 by the trustees of reclamations districts within the following
3 areas:

4 (A) Two members from the area of the North Delta Water
5 Agency as described in Section 9.1 of the North Delta Water
6 Agency Act (Chapter 283 of the Statutes of 1973), provided at
7 least one member is also a member of the Delta Citizens
8 Municipal Advisory Council.

9 (B) One member from the west delta consisting of the area of
10 Contra Costa County within the delta.

11 (C) One member from the area of the Central Delta Water
12 Agency as described in Section 9.1 of the Central Delta Water
13 Agency Act (Chapter 1133 of the Statutes of 1973).

14 (D) One member from the area of the South Delta Water
15 Agency as described in Section 9.1 of the South Delta Water
16 Agency Act (Chapter 1089 of the Statutes of 1973).

17 (2) Each reclamation district may nominate one director to be
18 a member. The member from an area shall be selected from
19 among the nominees by a majority vote of the reclamation
20 districts in that area. For purposes of this section, each
21 reclamation district shall have one vote. The north delta area
22 shall conduct separate votes to select each of its two members.

23 ~~(d) The Director of Parks and Recreation or the director's sole~~
24 ~~designee.~~

25 ~~(e) The Director of Fish and Game or the director's sole~~
26 ~~designee.~~

27 ~~(f) The Director of Food and Agriculture or the director's sole~~
28 ~~designee.~~

29 ~~(g) The executive officer of the State Lands Commission or~~
30 ~~the executive officer's sole designee.~~

31 ~~(h) The Director of Boating and Waterways or the director's~~
32 ~~sole designee.~~

33 ~~(i) The Director of Water Resources or the director's sole~~
34 ~~designee.~~

35 *(d) The public member of the California Bay-Delta Authority*
36 *who represents the delta region.*

37 *(e) The Secretary of Food and Agriculture or his or her*
38 *designee.*

39 *(f) The Secretary of the Resources Agency shall appoint six*
40 *members. Two members shall be appointed from the general*

1 *public who are delta residents or landowners, or representatives*
2 *of nongovernmental organizations and who possess interest in*
3 *the delta. Four members shall be appointed from departments*
4 *within the Resources Agency. All six of the following interests*
5 *shall be represented equally:*

6 *(1) Conservation of wildlife and habitat resources of the delta*
7 *region.*

8 *(2) Protection, promotion, and improvement of environmental*
9 *concerns, including, but not limited to, clean water, human*
10 *health, and ecosystems.*

11 *(3) Boating or marina operations.*

12 *(4) Outdoor recreation opportunities, including, but not*
13 *limited to, hunting and fishing.*

14 *(5) Historical and cultural preservation efforts.*

15 *(6) The unincorporated delta communities.*

16 SEC. 9. Section 29739 of the Public Resources Code is
17 amended to read:

18 29739. The commission shall elect from its members a
19 chairperson and vice chairperson whose terms of office shall be
20 two years. The members elected as chairperson and vice
21 chairperson shall be rotated each term, among representatives
22 from state, local, and public interest entities. If a vacancy occurs
23 in either office, the commission shall fill the vacancy for the
24 unexpired term.

25 SEC. 10. Section 29741 of the Public Resources Code is
26 amended to read:

27 29741. All meetings of the commission shall be held in the
28 delta.

29 SEC. 11. Section 29753 of the Public Resources Code is
30 amended to read:

31 29753. The commission may appoint advisory committees, as
32 necessary, for the purpose of providing the commission with
33 timely comments, advice, and information. The commission may
34 appoint committees from its membership or may appoint
35 additional advisory committees from members of other interested
36 public agencies and private groups. The commission shall seek
37 advice and recommendations from advisory committees
38 appointed by local government that are involved in subject
39 matters affecting the delta.

SEC. 12. Section 29756 of the Public Resources Code is amended to read:

29756. Pursuant to the requirements of Chapter 7 (commencing with Section 29775), and Chapter 4.6 (commencing with Section 31000) of Division 21, the commission may promote and facilitate the acquisition of voluntary private and public habitat and agricultural conservation easements in the delta.

SEC. 13. Section 29756.5 of the Public Resources Code is amended to read:

29756.5. The commission may act as the facilitating agency for the implementation of any programs for multiobjective flood control, joint habitat restoration or enhancement, or agricultural land conservation, located within the primary zone and secondary zone of the delta.

SEC. 14. Section 29760.5 is added to the Public Resources Code, to read:

29760.5. On or before January 1, 2007, the commission shall prepare a report reviewing the effectiveness of the resource management plan that identifies land use changes and growth pressures within the primary zone and land use changes and growth pressures in the secondary zone that may affect the resources of the primary zone. In cooperation with the Department of Conservation, the commission shall include information in the report that quantifies the rate, acreage, and location of agricultural land conversion and agricultural subdivisions in the primary and secondary zones of the delta since 1992. If appropriate, the report shall also contain the commission's recommendations and proposed changes to the Delta Protection Act (Chapter 1 (commencing with Section 29700)) or the resource management plan. The commission shall transmit copies of the report to the Governor and the Legislature.

SEC. 15. Section 29763 of the Public Resources Code is amended to read:

29763. Within 180 days from the date of the adoption of the resource management plan or any amendments, changes, or updates, to the resource management plan by the commission, all local governments shall submit to the commission proposed amendments that will cause their general plans to be consistent

1 with the criteria in Section 29763.5 with respect to land located
2 within the primary zone.

3 SEC. 16. Section 29763.5 of the Public Resources Code is
4 amended to read:

5 29763.5. The commission shall act on proposed local
6 government general plan amendments within 60 days from the
7 date of submittal of the proposed amendments. The commission
8 shall approve the proposed general plan amendments by a
9 majority vote of the commission membership, with regard to
10 lands within the primary zone, only after making all of the
11 following written findings as to the potential impact of the
12 proposed amendments, to the extent that those impacts will not
13 increase requirements or restrictions upon agricultural practices
14 in the primary zone, based on substantial evidence in the record:

15 (a) The general plan, and any development approved or
16 proposed that is consistent with the general plan, are consistent
17 with the resource management plan.

18 (b) The general plan, and any development approved or
19 proposed that is consistent with the general plan, will not result
20 in wetland or riparian loss.

21 (c) The general plan, and development approved or proposed
22 that is consistent with the general plan, will not result in the
23 degradation of water quality.

24 (d) The general plan, and any development approved or
25 proposed that is consistent with the general plan, will not result
26 in increased nonpoint source pollution.

27 (e) The general plan, and any development approved or
28 proposed that is consistent with the general plan, will not result
29 in the degradation or reduction of Pacific Flyway habitat.

30 (f) The general plan, and any development approved or
31 proposed that is consistent with the general plan, will not result
32 in reduced public access, provided the access does not infringe
33 on private property rights.

34 (g) The general plan, and any development approved or
35 proposed that is consistent with the general plan, will not expose
36 the public to increased flood hazard.

37 (h) The general plan, and any development approved or
38 proposed that is consistent with the general plan, will not
39 adversely impact agricultural lands or increase the potential for

1 vandalism, trespass, or the creation of public or private nuisances
2 on public or private land.

3 (i) The general plan, and any development approved or
4 proposed that is consistent with the general plan, will not result
5 in the degradation or impairment of levee integrity.

6 (j) The general plan, and any development approved or
7 proposed that is consistent with the general plan, will not
8 adversely impact navigation.

9 (k) The general plan, and any development approved or
10 proposed that is consistent with the general plan, will not result
11 in any increased requirements or restrictions upon agricultural
12 practices in the primary zone.

13 (l) The general plan, and any development approved or
14 proposed that is consistent with the general plan, will not result
15 in degradation to the cultural or historical value of delta
16 communities within the primary zone.

17 SEC. 17. Section 29765 of the Public Resources Code is
18 amended to read:

19 29765. Prior to the commission approving the general plan
20 amendments of the local government, the local government may
21 approve development within the primary zone only after making
22 all of the following written findings on the basis of substantial
23 evidence in the record:

24 (a) The development will not result in wetland or riparian loss.

25 (b) The development will not result in the degradation of water
26 quality.

27 (c) The development will not result in increased nonpoint
28 source pollution or soil erosion, including subsidence or
29 sedimentation.

30 (d) The development will not result in degradation or
31 reduction of Pacific Flyway habitat.

32 (e) The development will not result in reduced public access,
33 provided that access does not infringe upon private property
34 rights.

35 (f) The development will not expose the public to increased
36 flood hazards.

37 (g) The development will not adversely impact agricultural
38 lands or increase the potential for vandalism, trespass, or the
39 creation of public or private nuisances on private or public land.

1 (h) The development will not result in the degradation or
2 impairment of levee integrity.

3 (i) The development will not adversely impact navigation.

4 (j) The development will not result in any increased
5 requirements or restrictions upon agricultural practices in the
6 primary zone.

7 (k) The development will not result in degradation to the
8 cultural or historical value of delta communities within the
9 primary zone.

10 SEC. 18. Section 29766.5 is added to the Public Resources
11 Code, to read:

12 29766.5. Nothing in this division shall prevent or discourage
13 the use of primary zone lands for mitigation purposes under
14 applicable laws for the loss of agricultural, open-space, or habitat
15 lands in the secondary zone.

16 SEC. 19. Section 29770 of the Public Resources Code is
17 amended to read:

18 29770. (a) Any person who is aggrieved by any action taken
19 by a local government or other local agency in implementing the
20 resource management plan, or otherwise taken pursuant to this
21 division, may file an appeal with the commission. The ground for
22 an appeal and the commission consideration of an appeal shall be
23 that an action, as to land located exclusively within the primary
24 zone, is inconsistent with the resource management plan, the
25 approved portions of local government general plans that
26 implement the resource management plan, or this division. The
27 appeal shall be heard by the commission within 60 days from the
28 date of the filing of the appeal, unless the commission, either
29 itself or by delegation to the executive director, determines that
30 the issue raised on appeal is not within the commission's
31 jurisdiction or does not raise an appealable issue.

32 (b) In the absence of an appeal by an aggrieved person, the
33 commission may decide by majority vote to review on appeal
34 any action taken by a local government or other local agency in
35 implementing the resource management plan, or otherwise taken
36 pursuant to this division, for land located exclusively within the
37 primary zone, if the commission believes the action may be
38 inconsistent with the resource management plan, or this division.

39 (c) The commission shall, by regulation, adopt administrative
40 procedures governing those appeals.

1 (d) The commission may comment on projects within the
2 secondary zone that impact the primary zone.

3 SEC. 20. Section 29771 of the Public Resources Code is
4 amended to read:

5 29771. After a hearing on an appealed action, the commission
6 shall either deny the appeal or remand the matter to the local
7 government or local agency for reconsideration, after making
8 specific findings. Upon remand, the local government or local
9 agency shall modify the appealed action and resubmit the matter
10 for review to the commission. A proposed action appealed
11 pursuant to this section shall not be effective until the
12 commission has adopted written findings, based on substantial
13 evidence in the record, that the action is consistent with the
14 resource management plan, the approved portions of local
15 government general plans that implement the resource
16 management plan, and this division.

17 SEC. 21. Section 29776 of the Public Resources Code is
18 amended to read:

19 29776. The Sacramento-San Joaquin Delta Protection Fund is
20 hereby created in the State Treasury. Any money in the
21 Sacramento-San Joaquin Delta Protection Fund is available, upon
22 appropriation by the Legislature, for support of the commission.